

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 7
)
AKORN HOLDING COMPANY LLC, <i>et al.</i> ,) Case No. 23-10253 (KBO)
)
Debtors. ¹) (Jointly Administered)
)
) Hearing Date: TBD
) Responses Due: July 21, 2023 at 4:00 p.m.
)

**MOTION OF M. JACOB & SONS D/B/A MJS PACKAGING FOR ENTRY OF AN
ORDER ALLOWING AN ADMINISTRATIVE EXPENSE PRIORITY CLAIM
PURSUANT TO 11 U.S.C. § 503(b)(9)**

M. Jacob & Sons d/b/a MJS Packing (“MJS”), a claimant and creditor in the above-captioned jointly administered chapter 7 bankruptcy cases (the “Chapter 7 Cases”) filed by Akorn Operating Company, LLC (“Akorn”) and certain of its affiliates listed in footnote 1 (collectively, the “Debtors”), by and through its counsel, hereby submits this *Motion for Entry of an Order Allowing an Administrative Expense Priority Claim Pursuant to 11 U.S.C. § 503(b)(9)* (the “Motion”) and requests entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”). In support of the Motion, MJS incorporates the Declaration of Beth Senak in support of the Motion (the “Senak Declaration”) and states as follows:

¹ The Debtors in these chapter 7 cases, along with the last four digits of their federal tax identification numbers, and cases numbers are Akorn Holding Company LLC (9190), Case No. 23-10253 (KBO); Akorn Intermediate Company LLC (6123), Case No. 23-10254 (KBO); and Akorn Operating Company LLC (6184), Case No. 23-10255. The Debtors’ headquarters is located at 5605 CenterPoint Court, Gurnee, IL 60031.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.
2. This Motion is a core proceeding under 28 U.S.C. § 157(b).
3. Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.
4. In accordance with Rule 9013-1(f) of the Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), MJS consents to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BASIS FOR RELIEF REQUESTED

5. The relief requested herein is supported pursuant to section 503(b)(9) of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9006-1 of the Local Rules.

BACKGROUND

6. MJS is in the business of supplying packaging components.
7. In December 2022, Akorn entered into a Non-Exclusive Packaging Component Supply Agreement (the “Agreement”) with MJS, pursuant to which MJS agreed to continue supplying packaging components to Akorn. A copy of the Agreement is attached to the Senak Declaration as Exhibit 1.
8. On February 23, 2023 (the “Petition Date”), the Debtors filed petitions initiating the Chapter 7 Cases.

9. During the 20 days prior to the Petition Date, Akorn received goods from MJS in the amount of \$288,200.73.

10. Attached hereto as **Exhibit B** is a printout relating to the packaging components Akorn received from MJS within twenty days of the Petition Date.

BASIS FOR RELIEF REQUESTED

11. Section 503(b)(9) of the Bankruptcy Code provides that after notice and a hearing, “there shall be allowed, administrative expenses, . . . including----(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

12. Although “goods” is not defined in the Bankruptcy Code, this Court has applied the definition of “goods” set forth in Article 2-105(1) of the Uniform Commercial Code, which provides that “[g]oods’ means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action.” U.C.C. § 2-105(1).

13. MJS supplied to Akorn \$288,200.73 in goods (i.e., the packaging materials) in the ordinary course of business between Akorn and MJS within twenty days of the commencement of Debtors’ Chapter 7 Cases. MJS has received no payment with respect to such goods.

14. For the foregoing reasons, MJS is entitled to an administrative expense priority claim in accordance with section 503(b)(9) of the Bankruptcy Code in the amount of \$288,200.73.²

² MJS filed a Proof of Claim with the Court on June 1, 2023 (Claim No. 185). The Proof of Claim also reflects the receipt of packaging components by Akorn from MJS within the 20 days before the Petition Date.

NOTICE

15. Notice of this Motion has been provided to: (a) counsel for the Office of the United States Trustee, (b) counsel for the Debtors, (c) counsel for the Chapter 7 Trustee appointed in the Chapter 7 Cases, and (d) all parties that have filed a request for notice pursuant to Local Bankruptcy Rule 2002. MJS submits that no other or further notice is required.

NO PRIOR REQUEST

16. No prior request for the relief sought herein has been made to this Court or any other Court.

WHEREFORE, MJS respectfully requests entry of the Proposed Order and such other and further relief as the Court deems appropriate under the circumstances.

Date: July, 7, 2023
Wilmington, Delaware

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